

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MICHAEL MARKOWITZ,)
Plaintiff,)

vs)

2:20cv1311

Electronic Filing

WILLIAM NICHOLSON, ROBERT)
GILMORE, JAMES FETTERMAN,)
SHARON CPLAIZZI, and)
DR. TIMOTHY KROSS,)
Defendants.)

MEMORANDUM ORDER

AND NOW, this 22nd day of March, 2023, upon due consideration of 1) defendants William Nicolson and Robert Gilmore's motion for summary judgment and the parties' submissions in conjunction therewith and 2) the Report and Recommendation of the Magistrate Judge addressing the same and [114] plaintiff's objections thereto, and after *de novo* review of the record, IT IS ORDERED that [88] defendants' motion for summary judgment be, and the same hereby is, granted. The [109] Report and Recommendation of the Magistrate Judge as augmented therein is adopted as the opinion of the court.

Plaintiff's objections are without merit. Plaintiff conflates a showing that the non-medical prison officials were aware that he was complaining that the alternative course of pain medication prescribed by the medical practitioners was not providing him with the desired relief with a showing that the non-medical officials had a basis to believe or were aware that the medical treatment providers were "mistreating (or not treating)" him. Pearson v. Prison Health Services, 850 F.3d 526, 543 (3d Cir. 2017). As discussed in more detail in the Magistrate Judge's report and recommendation, the scienter requirement for liability in the instant context

requires something more than an acknowledgement by such officials that they were aware that an inmate had complained that a new course of treatment prescribed by medical staff for long term pain was ineffective and filed grievances registering those complaints. And as further explained, the record here lacks sufficient evidence to meet the required level of scienter needed to prove deliberate indifference. Consequently, these defendants are entitled to summary judgment; and

IT FURTHER IS ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure if plaintiff desires to appeal from this Order she must do so within thirty (30) days by filing a notice of appeal as provided in Rule 3, Fed. R. App. P.

s/David Stewart Cercone
David Stewart Cercone
Senior United States District Judge

cc: The Honorable Cynthia Reed Eddy,
United States Magistrate Judge

Annamarie Truckley, DAG
Scott A. Bradley, SDAG
Benjamin M. Lombard, Esquire
Samuel H. Foreman, Esquire

(Via CM/ECF Electronic Mail)

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